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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

CAROL A. CRANE, Individually and as Administratrix  
of the Goods, Chattels and Credits which were of PETER  
A. CRANE, Deceased,

*Petitioner,*

v.

CONSOLIDATED RAIL CORP.,

*Respondent.*

On Writ of Certiorari to the United States Court of Appeals  
for the Second Circuit

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BRIEF OF RESPONDENT

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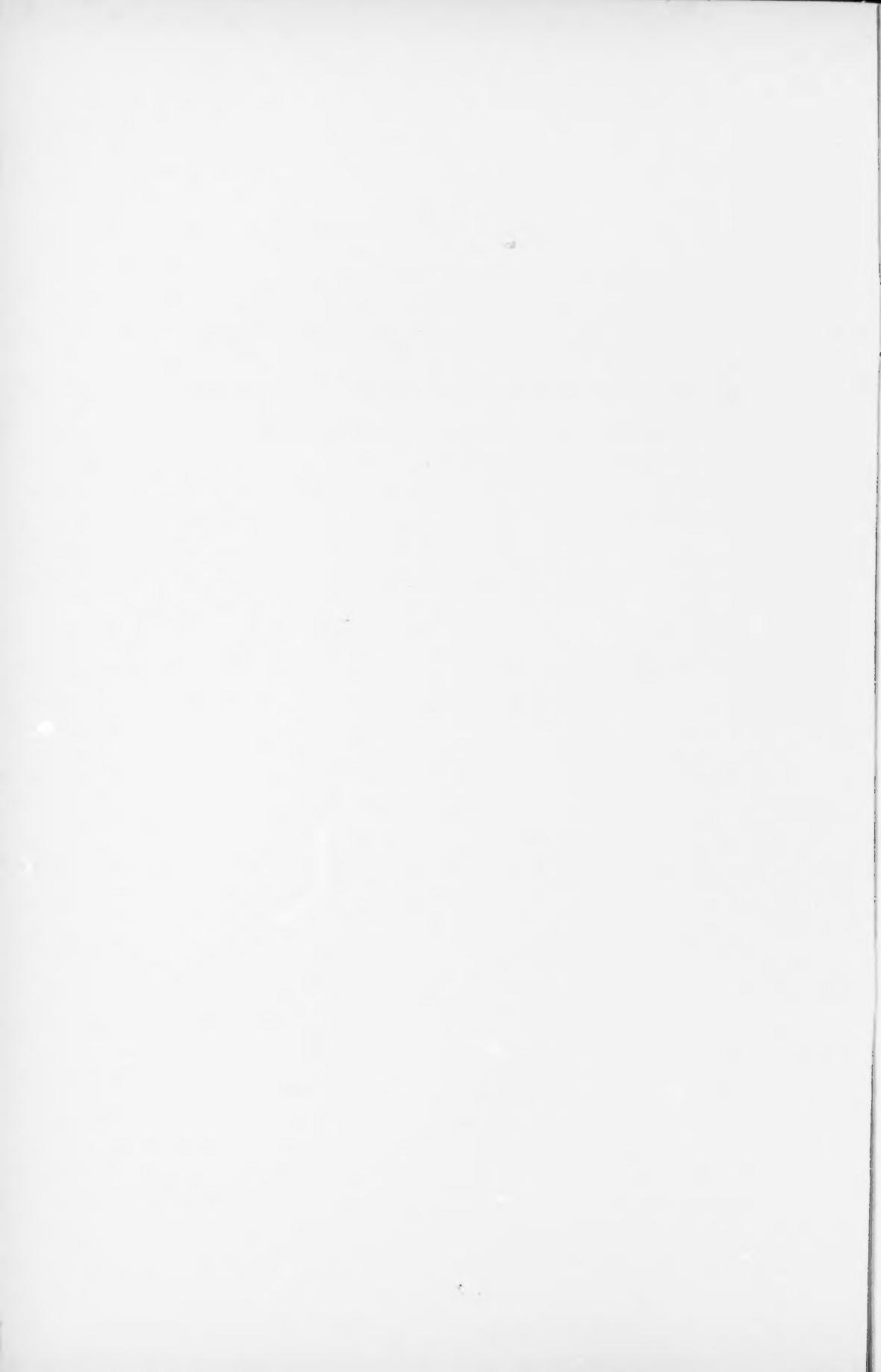
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### **Questions Presented**

1. Did the Court of Appeals act within its authority under the Constitution, Statutes and common law in reversing the Order of the Trial Judge granting a new Trial on the issue of damages, on the ground that the granting of such new Trial was an abuse of discretion?
2. Did the Court of Appeals properly affirm the Trial Judge's charge on damages?



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**BRIEF OF RESPONDENT**

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**Preliminary Statement**

This is an action for wrongful death brought under the Federal Employers Liability Act. The first Trial resulted in a verdict in favor of the plaintiff in the

amount of FOUR HUNDRED TWENTY-FIVE THOUSAND (\$425,000.) DOLLARS, reduced by a jury finding of fifty (50%) per cent contributory negligence. Upon Post-Trial Motion of the plaintiff, the Trial Judge set aside the jury verdict on contributory negligence as being against the weight of the evidence. The Trial Judge also set aside the verdict on damages with the speculative conclusion "that the jury's damage finding may also have been tainted by the misconception of the law and the evidence." (Petitioner's Appendix, A-36).

A second Trial, in which the issue of contributory negligence was not contested, resulted in a verdict in favor of the plaintiff in the amount of ONE MILLION SEVEN HUNDRED FIFTY THOUSAND (\$1,750,000.) DOLLARS.

On Appeal by the defendant, the Second Circuit Court of Appeals affirmed the Trial Judge's setting aside of the verdict in the first Trial on the issue of contributory negligence. However, the Second Circuit Court of Appeals reversed the Trial Court's Order setting aside the first verdict on damages on the ground that such a reversal was an abuse of discretion. The Court of Appeals, did not reach any issues raised by the defendant as to alleged errors in the second Trial.

In the interests of brevity and to avoid repetition, the respondent adopts as its statement of the nature of the case, the facts as set forth in the Opinion of Circuit Judge Friendly, appearing at pages A-6 through A-14 of the Petitioner's Appendix.

## POINT I

**The Trial Court did not set aside the first damage award of four hundred twenty-five thousand (\$425,000.) dollars on the ground that such award was against the weight of evidence.**

Point I of the Petitioner's Brief artfully attempts to assert that the Trial Court set aside the first damage award on the ground that such award was against the weight of the evidence. This assertion is incorrect. It is without foundation in the Record before this Court.

The Trial Court devoted only a single three sentence paragraph in its Opinion to the issue of damages, to wit:

"Plaintiff also seeks a new trial on the issue of damages. Where, as here, the jury has rendered a detailed special verdict, the court may properly separate the issues of contributory negligence and damages for retrial purposes. Akermanis, slip op. at 4815-16. However, on the facts here, the court believes that the finding of damages and that of contributory negligence are sufficiently related that the jury's damage finding may also have been tainted by the misconception of the law and the evidence." (A-35-36).

If the Trial Judge had intended to set aside the verdict on the grounds that it was against the weight of the evidence, a simple statement to that effect would have clarified the issue. No such statement was made by the Trial Judge.

The Court below, in its Opinion, specifically held:

"The Judge did not find that the verdict with respect to damages at the first Trial was against the weight of the evidence, and there would have been no basis for doing so." (A-23).

## POINT II

**The Court of Appeals acted within its authority in reversing the order of the Trial Court setting aside the damage award on the first trial.**

It has consistently been held by this Court and the Circuit Courts below, that a Trial Judge's discretion to set aside a jury verdict is not unlimited. *Sentilles v. Inter-Caribbean Shipping Corp.*, 361 US 107, 110, 80 S. Ct. 173, 176; *Tenant v. Peoria & Pekin Union R. Co.*, 321 U.S. 29, 35, 64 S.Ct. 409, 412, 38 L.Ed. 520.

The petitioner admits, in Point II of its Brief at pages 23 and 24, that the Circuit Courts of Appeal have the inherent power to set aside the granting or refusing of a new Trial where there has been an abuse of discretion by the Trial Court.

The Second Circuit Court of Appeals, in its Opinion, adopted the standard that it would not set aside the discretionary ordering or denial of a new Trial if there was "any basis in reason" (A-17) to sustain the Trial Court's determination. Applying this standard, the Second Circuit Court of Appeals affirmed the direction of a new Trial on liability and reversed the direction of a new Trial on damages. Specifically, the Court found as follows:

"If Conrail had greater responsibilities than Crane, as it did, the judge had a rational basis for thinking that an allocation of 50% of the total fault

to him was 'seriously erroneous'. We thus cannot find that she abused her discretion by setting aside so much of the verdict as found that Crane's responsibility for the accident was equal to Conrail's.

We take a different view with respect to so much of the order as directed a new trial on the issue of damages." (A-19-A-20)

\* \* \*

"In sum, we find no adequate basis in the record or in the judge's memorandum opinion for her directing the issue of damages to be retried simply because the jury had assessed too large a degree of fault against Crane. Recognizing the deference owed to the trial judge because of her superior opportunity to get the "feel of the case", Cone v. West Virginia Pulp & Paper Co., 330 U.S. 212, 216 (1947), something more is required to upset a verdict than the conclusory language with respect to 'taint' used by the district judge. While we must guard against usurping the trial court's prerogative with respect to seriously erroneous jury verdicts, we must be equally diligent in protecting the jury's function. Direction of a new trial on an issue determined by a jury without the articulation of a sufficient basis for such action effects, as Chief Judge Biggs said in the Lind case, *supra*, 278 F.2d at 90, 'a denigration of the jury system and to the extent that new trials are granted the judge takes over, if he does not usurp, the prime function of the jury as the trier of the facts.'" (A-24-A-25).

Clearly, the Second Circuit Court of Appeals acted within its authority in concluding that there was no

rational basis for setting aside the first damage award and that, consequently, the Trial Judge had abused her discretion in so doing.

### POINT III

**There was no error regarding the charge on damages at the first trial.**

In substance, the petitioner asserts that it was error for Judge Motley to refuse to charge the jury that it could take into consideration the rate of inflation as well as the rate of interest in discounting the award to present value. This exception is without merit.

The plaintiff produced no evidence at the first Trial with regard to future earnings, future interest rates or future rates of inflation.

The only testimony on the first trial as to future wages was by the defendant's economist, Dr. Staller. Dr. Staller testified as to the lost earnings of the decedent and the manner in which he arrived at the present value of the lost earnings. In substance, Dr. Staller projected the lost earnings of the decedent for a period of twenty-six (26) years, which projection included increases each year for inflation. (492a). He testified that in the year 2005, the decedent would be receiving approximately ninety-three thousand (\$93,000.) dollars a year in salary. (493a). He then discounted the sum of the gross *inflated* wages by a twelve (12% per cent interest factor to arrive at the present value. (493a-494a).

This is entirely consistent with the first method approved, in *Doca v. Marina Mercante Nicaraguense, S.A.*, 634 F. 2d 30 (1980).

Specifically, the Court stated, in *Doca, supra*, at page 34:

"If an adjustment for inflation is to be made, two approaches are available. Under the first method the projection of current wages is increased to reflect the fact that the employee would have received cost of living increases to keep pace with inflation. The sum of those increased annual wage figures is then discounted to present value by the prevailing interest rate. See United States v. English, 521 F.2d 63, 75 (9th Cir., 1975)."

In addition, there could have been no confusion on the part of the jury regarding the discounting of present value figures testified to by Dr. Staller. The Court specifically clarified this issue in its charge when it stated:

"The figures which you see on the blackboard relating to future earnings of the decedent, and which were put there by both the defendant on direct examination of its expert witness and by the plaintiff on cross examination of that witness, represent the present worth , that is, the reduced amount of those wages, that is, anticipated future wages from Mr. Crane's earnings to his wife and son. Those amounts, in other words, have already been discounted to their present worth." (713a).

## CONCLUSION

For the reasons set forth above, respondent respectfully requests that a Writ of Certiorari to review the Judgment of the United States Court of Appeals for the Second Circuit, be denied.

Respectfully submitted,

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